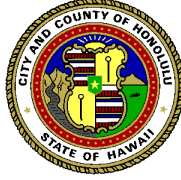


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR

CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ADVISORY OPINION NO. 2012-5

REDACTED MEMORANDUM

DATE: SEPTEMBER 12, 2012

TO: ANNA HIRAI, ASSISTANT ADMINISTRATOR, LIQUOR COMMISSION

FROM: CHARLES W. TOTTO, EXECUTIVE DIRECTOR AND LEGAL COUNSEL, HONOLULU ETHICS COMMISSION
LAURIE A. WONG, ASSOCIATE LEGAL COUNSEL, HONOLULU ETHICS COMMISSION

RE: EC No. 12-169 FORMAL REQUEST FOR ADVICE:2013 ORGANIZATION ANNUAL MEETING AND CONFERENCE

I. FACTUAL BACKGROUND

The Honolulu Liquor Commission (LIQ) has sole jurisdiction, power, authority, and discretion to take the following actions including, but not limited to:

- Grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- Take appropriate action against a person who, directly or indirectly, manufactures, sells, or purchases any liquor without being authorized pursuant to this chapter; and
- Control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education.

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HRS Sec. 281-17. LIQ is a member of the [Organization] ("Organization"). The Organization is a non-profit corporation that, among other things, promotes the enactment of the most effective and equitable types of state alcoholic beverage control laws. Organization Art. IV, Cert. of Incorporation. Organization consists of states and territories that have primary responsibility for the administration of the alcoholic beverage control laws. Art. I, Bylaws, Organization. Associate members include trade associations, suppliers, wholesalers, retailers and law firms.

Organization holds an annual meeting and conference (Conference) to promote the enactment of the most effective and equitable types of state alcoholic beverage control laws. Organization's Executive Committee selected Honolulu, Hawaii as the locale for the June 2013 Conference. Organization designated LIQ as the "hosting agency" for the Conference. Anna C. Hirai, Assistant Administrator, LIQ, is the liaison between the Organization and LIQ. As the liaison, Ms. Hirai would be the individual responsible for: (1) signing letters to solicit donations from non-licensed/non-regulated entities; and (2) receiving gifts on behalf of the Organization for the Conference. According to Ms. Hirai, her city duties include having discretionary and/or enforcement authority over licensees.

As the hosting agency, LIQ is formally required to submit a proposed budget for the Conference and submit preliminary and final reports to the Organization Executive Committee. LIQ also has access to Organization's petty cash account to pay for Conference incidentals. LIQ is responsible for providing all social and hospitality features for the Organization Conference. Specifically, LIQ will be the Organization facilitator for entities who wish to take part in the social and hospitality efforts. It is not possible for LIQ to allow the non-regulatory members or associate members of Organization in Honolulu or the industry to handle the social and hospitality events without the intervention or assistance of LIQ because historically the Organization conferences have always been planned and hosted by regulators. If delegation were made to a member in another county, that county would properly be the conference site as opposed to Honolulu. Organization will not permit the acceptance of liquor donations from any source.

To date, the following have occurred in regard to Conference preparation: [Ms. A] and [Ms. B], [positions] of Organization, respectively, solicited bids from Waikiki hotels for the Conference. Ms. Hirai accompanied Ms. A and Ms. B to conduct site visits of the hotels. Ms. A and Ms. B negotiated and executed a contract with a hotel that included room rates, food and beverage requirements, and meeting facilities.

The Commission understands that LIQ plans to observe the following measures to avoid any violations of the city's ethics laws:

- LIQ would solicit and accept donations of funds, goods, and services as permitted by Organization from non-licensees or unregulated entities ("Non-Licensees");

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- Licensees or regulated entities (“Licensees”) will not be solicited for donations of funds, goods, or services of any kind;

On July 10, 2012, Ms. Hirai, on behalf of LIQ contacted the Ethics Commission staff for further guidance as to the following issues.

II. ISSUES AND SHORT ANSWERS

A. Can LIQ accept unsolicited donations of goods from Licensees on behalf of the Organization for the benefit of the city?

Yes, because the general rule prohibiting a city officer or employee having enforcement power or review authority over any application or permit from soliciting gifts to the city under Resolution No. 05-349, does not prohibit an agency with those powers to receive unsolicited gifts pursuant to Ethics Commission Guidelines on Gifts to City Agencies (Mar. 20, 2006) (“Guidelines”) at Section 1.

B. Would the gifts obtained by LIQ for Organization be considered gifts to the LIQ and therefore be subject to the City Council gifts to city agency guidelines found in Resolution No. 05-349?

Yes, because LIQ would be collecting donations for reasonable and necessary expenses of the Organization conference which furthers a legitimate government purpose to promote the enactment of the most effective and equitable types of state alcoholic beverage control laws which is in alignment with the LIQ responsibilities.

III. ANALYSIS

A. LIQ may accept unsolicited donations of goods from Licensees on behalf of the Organization for the benefit of the city.

In Advisory Opinion No. 2003-2, the Ethics Commission was faced with a similar situation where the LIQ was hosting a state conference for the four counties. The Commission stated that LIQ should no longer be involved in the planning, coordination, or implementation of social events for conferences because industry gifts were intended only to make the conferences more successful through social events. Therefore, if the industry were to handle the social events directly, it should alleviate the need for LIQ to ask for or receive any donations of cash, goods or services from the licensees for conference purposes.

In conclusion, the Commission suggested the following: (1) that the industry should handle social events without the intervention or assistance of LIQ; (2) LIQ should ensure that its personnel and members follow the prohibition against the solicitation or receipt of gifts from any licensee or licensee representative; and (3) LIQ not enter into a contract with a

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licensee unless there is a compelling need to do so and no practical alternative to a direct contractual relationship between the LIQ and the licensee.

It is our understanding that in regard to LIQ state-hosted conferences, LIQ continues to coordinate the social and business events, since LIQ does not solicit or accept any gifts for the state conference. Conference registration fees pay for all conference costs.

Unlike, the state conferences, it is our understanding that the membership and Conference fees would not be able to Cover all of the conference costs. I understand that there is no practical alternative for funding and therefore, **donations must be solicited to support the Conference.**

Gifts to the LIQ made to further the proper goals, functions or business of the LIQ may be accepted as long as a reasonable person would not conclude that the gift was intended to reward or influence an officer or employee in carrying out his or her duty. Guidelines at Sec. 1. In addition, the gift must be for a legitimate government function such as educating LIQ staff about new services or products and must be related to the responsibilities of the agency. Also, the gift must only be for reasonable and necessary expenses associated with the express purpose of the donation, and not for the sole benefit of the affected officer. See Guidelines at Sec. 3 and 4.

A city officer or employee shall not solicit, receive or accept any gift to the city under circumstances that in fact or in appearance:(1) Rewards, influences or tends to impair the judgment of any city officer or employee in the performance of the officer's or employee's official duties; or (2) Provides special consideration, treatment, advantage, privilege, or exemption for or coerces a potential donor. See Guidelines at Sec. 1.

Here, LIQ has already stated that it will not solicit gifts from Licensees. But, LIQ may receive **unsolicited** gifts from Licensees. See Guidelines at Sec. 1 ("No city officer or employee having enforcement power or review authority over any application or permit shall solicit gifts to the city...The rule does not apply to unsolicited gifts being received by those with enforcement powers or discretionary authority.") The Ethics Commission staff believes that this is appropriate because (1) there will be no danger of an appearance of coercion for failure to give a gift since the gift was not solicited; (2) the gift will be used for the benefit of the city and will not be used for the sole benefit of the LIQ staff; and (3) the Ethics Commission staff suggests an additional safeguard against the appearance of impropriety; upon receipt of the gift, that LIQ send a thank you letter acknowledging the gift and stating that acceptance of the gift will not result in special treatment.

In regard to soliciting gifts from Non-Licensees, LIQ should take care in determining whether the Non-Licensee has some alignment with the hospitality industry. LIQ should not solicit a gift from a Non-Licensee in the hospitality industry that has a shared financial interest with a Licensee (e.g., subsidiary or a parent company to a Licensee) if a reasonable person could conclude that the gift was intended to reward or influence the LIQ.

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B. Gifts obtained by LIQ for Organization are considered gifts to the LIQ and therefore by subject to the City Council gifts to city agency guidelines found in Resolution No. 05-349.

All gifts received in support of the Organization whether unsolicited from Licensees or Non-Licensees or solicited from Non-Licensees, would be considered gifts to LIQ or the city. LIQ has several practices and policies in place that would prevent employees or commissioners from personally indulging in any gifts from Licensees. LIQ Standards of Conduct provides the following:

Commission personnel shall not solicit or accept, either for themselves or others, any bribes, gifts, donations, gratuities, loans, fees, rewards or anything of value, including refreshments or food from a licensee or employee of any licensee, without prior approval from the Liquor Control Administrator.

In addition, to the extent that a licensee made an unsolicited donation to the Organization conference that could presumably be consumed or used by an employee or member, the LIQ Administrator would make a determination if the unsolicited gift was in fact made to LIQ and could be consumed or used by the employee or member.

Finally, LIQ Rule 3-84-79.2 subjects a licensee to a violation if a gift was given with the intent to influence an employee or investigator in the discharge of his/her duties.

The LIQ has the sole jurisdiction, power, authority, and discretion to take the following actions including, but not limited to:

- Grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- Take appropriate action against a person who, directly or indirectly, manufactures, sells, or purchases any liquor without being authorized pursuant to this chapter; and
- Control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education.

The Organization holds an annual conference to promote the enactment of the most effective and equitable types of state alcoholic beverage control laws. Gifts both solicited and unsolicited would be for the purpose of supporting the Conference to cover Conference costs which would not be covered by fees. Gifts in excess of the cost of the conference are returned to the Organization master account. Gifts supporting the Conference also support the promotion and enactment of the most effective and equitable types of state alcoholic

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beverage laws which are aligned with the responsibilities of the LIQ. As such, gifts supporting the Organization conference to LIQ can be considered a gift to the city.

IV. CONCLUSION AND RECOMMENDATIONS

LIQ may accept unsolicited donations of goods from Licensees on behalf of the Organization for the benefit of the city. Gifts obtained by LIQ for Organization are considered gifts to the LIQ and therefore by subject to the City Council gifts to city agency guidelines found in Resolution No. 05-349. The Commission staff also recommends the following:

- A. When LIQ solicits gifts from Organization Non-Licensees, it should do so in writing explaining that LIQ is soliciting a gift to the city in support of the Organization Conference which will promote the enactment of the most effective and equitable type of state alcoholic beverage control laws
- B. When LIQ receives gifts, LIQ should send a letter to the donor letting them know what the funds will be used for and that the gift will not result in any favored treatment for the donor in pending or future decisions.
- C. Ms. Hirai should document how the gift benefitted LIQ by discussing what was learned at the Conference in a narrative report transmitted to those in the agency who would benefit from the report. See Guidelines at Sec. 5.
- D. Finally, LIQ should review and follow Resolution No. 05-349 which has specific requirements for the approval of gifts to the city. See Guidelines at Sec. 6.

APPROVED BY THE HONOLULU ETHICS COMMISSION:

_____/s/_____
CHARLES W. GALL, CHAIR

APPROVED AS TO LEGAL FORM BY:

_____/s/_____
CHARLES W. TOTTO, EXECUTIVE DIRECTOR AND LEGAL COUNSEL